

REMARKS

[0002] Applicant respectfully requests reconsideration and allowance of all of the claims of the application. The status of the claims is as follows:

- Claims 1-4, 6-8, 10-12, 14-22, 25 and 26 are currently pending
- Claims 5 and 24 are canceled herein
- Claims 1, 3, 4, 7, 11, 12, 21 and 22 are amended herein

[0003] Independent claims 1, 11 and 21 are amended to include subject matter from dependent claims 5 and 24.

Cited Document

[0004] Dunbar: Dunbar, et al., U.S. Patent Application Publication No. 2004/0268397 has been applied to reject one or more claims of the Application.

Applicant's Right to Adequately Respond

[0005] Applicant submits that the Office has not clearly articulated the reasons for its decision-making.

[0006] For example, in response to the Final Office Action issued January 16th, 2009, Applicant submitted an official response on April 16th, 2009, including arguments addressing Dunbar (US Patent Pub 2004/0268397). In the current rejection, however, the Examiner indicates that the presented arguments are moot based on the new grounds of rejection (OA page 2). However, each pending claim in the current rejection is rejected based on the same Dunbar reference. Therefore, it appears the Examiner's

response to arguments contradict the issued rejection because it does not appear there is a new grounds for rejection. Accordingly, Applicant cannot adequately respond to the issued Office Action and requests that the next action—if not a Notice of Allowance—be Non-Final.

[0007] Furthermore, in addition to the reasons presented below, Applicant submits that Dunbar does not anticipate the pending claims for at least the reasons presented in the response filed on April 16th, 2009, and that the Examiner has not responded to those presented arguments.

Claims 1-8, 10-12, 14-22 and 24-26

[0008] Claims 1-8, 10-12, 14-22 and 24-26 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Dunbar. Applicant respectfully traverses these rejections. Nevertheless, claims 1, 11 and 21 have been amended to recite features similar to those previously recited in canceled claims 5 and 24. These claims are amended solely for the purpose of expediting issuance of this application.

Independent Claim 1

[0009] Applicant submits that the Office has not shown that Dunbar anticipates this claim. Dunbar does not disclose at least the following features of this claim, as amended based on subject matter formerly recited in claim 5 (with emphasis added):

- “determining whether to perform the decoding and buffering when ***spare computing resources are otherwise available*** to decode ***ahead in the timeline.***”

[00010] The Office cites Dunbar Figure 5 (the rejection of claim 5), as disclosing this element. (Office Action, page 4) Applicant respectfully disagrees. Dunbar describes handling of variable rate playback in a multimedia computer architecture. (Dunbar Abstract) Dunbar Figure 5 discloses determining whether a rate in a query is supported (#520) and determining and returning information indicating whether a rate change is supported (#540 and #550). Dunbar does not disclose "when ***spare computing resources are otherwise available***" as recited in claim 1.

[00011] Consequently, Dunbar does not disclose all of the elements and features of this claim. Accordingly, Applicant submits that Dunbar does not anticipate this claim, and respectfully requests that the rejection of this claim be withdrawn.

Independent Claims 11 and 21

[00012] Independent claims 11 and 21 each include at least one feature similar to those discussed above with respect to claim 1. Thus, Applicant submits that independent claims 11 and 21 are allowable over the cited document at least for similar reasons that claim 1 is allowable over the cited document. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejections of these claims.

Dependent Claims 2-4, 6-8, 10, 12, 14-20, 22, 25 and 26

[00013] Claims 2-4, 6-8, 10, 12, 14-20, 25 and 26 ultimately depend from one of independent claims 1, 11 or 21. As discussed above, claims 1, 11 and 21 are not anticipated by Dunbar, and are therefore allowable over the cited document. Therefore, dependent claims 2-4, 6-8, 10, 12, 14-20, 25 and 26 are also allowable over the cited document of record for at least their dependencies on an allowable base claim. Additionally, these claims may also be allowable for the additional features they recite.

Conclusion

[00014] Applicant asserts that all pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the Examiner is urged to contact the undersigned representative for the Applicant before issuing a subsequent Action.

Respectfully Submitted,

Lee & Hayes, PLLC
Representatives for Applicant

/Jacob Rohwer 61229/
Jacob P. Rohwer
(jacob@leehayes.com; 206-876-6004)
Registration No. 61229

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Bea Koempel-Thomas
(bea@leehayes.com; 509-944-4759)
Registration No. 58213